



UNITED STATES DEPARTMENT OF COMMERCE
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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO. <i>ms</i>
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INVENTOR'S NAME (PRINT OR TYPE)

INVENTOR'S ADDRESS (PRINT OR TYPE)

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EXAMINER

EXAMINER

EXAMINER'S NAME

ART UNIT

PAPER NUMBER

1741

VI

DATE MAILED:

11/15/00

Please find below and/or attached an Office communication concerning this application or proceeding.

Commissioner of Patents and Trademarks

Office Action Summary

Application No.

09/284,816

Applicant(s)

Malcorps et al

Examiner

Curtis E. Sherrer

Group Art Unit

1761



X Responsive to communication(s) filed on Aug 31, 2000

This action is **FINAL**.

Since this application is in condition for allowance except for formal matters, **prosecution as to the merits is closed** in accordance with the practice under *Ex parte Quayle*, 35 C.D. 11, 453 O.G. 213.

A shortened statutory period for response to this action is set to expire 3 month(s), or thirty days, whichever is longer, from the mailing date of this communication. Failure to respond within the period for response will cause the application to become abandoned (35 U.S.C. § 133). Extensions of time may be obtained under the provisions of 37 CFR 1.136(a).

Disposition of Claim

X Claim(s) 19-39 is/are pending in the application.

Of the above, claim(s) 20, 21, and 28-33 is/are withdrawn from consideration.

Claim(s) _____ is/are allowed.

X Claim(s) 19, 22-27, and 34-39 is/are rejected.

Claim(s) _____ is/are objected to.

Claims _____ are subject to restriction or election requirement.

Application Papers

X See the attached Notice of Draftsperson's Patent Drawing Review, PTO-948.

The drawing(s) filed on _____ is/are objected to by the Examiner.

The proposed drawing correction, filed on _____ is ☐ approved ☐ disapproved.

The specification is objected to by the Examiner.

The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. § 119

X Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).

X All ☐ Some* ☐ None ☐ of the CERTIFIED copies of the priority documents have been

X received

received in Application No. (Series Code/Serial Number) _____

received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

*Certified copies not received _____

Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).

Attachment(s)

X Notice of References Cited, PTO-892

Information Disclosure Statement(s), PTO-1449, Paper No(s) _____

Interview Summary, PTO-413

SEE OFFICE ACTION ON THE FOLLOWING PAGES ...

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DETAILED ACTION

Election/Restriction

1. Applicant's election of species in Paper No. 10 is acknowledged. Because applicant did not distinctly and specifically point out the supposed errors in the restriction requirement, the election has been treated as an election without traverse (MPEP § 818.03(a)).
2. Claims 20, 21, and 28-33 are withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected species, there being no allowable generic or linking claim. Election was made **without** traverse in Paper No. 10.
3. Applicant is reminded that upon the cancellation of claims to a non-elected invention, the inventorship must be amended in compliance with 37 CFR 1.48(b) if one or more of the currently named inventors is no longer an inventor of at least one claim remaining in the application. Any amendment of inventorship must be accompanied by a petition under 37 CFR 1.48(b) and by the fee required under 37 CFR 1.17(I).

Priority

4. Receipt is acknowledged of papers submitted under 35 U.S.C. 119(a)-(d), which papers have been placed of record in the file.

Claim Rejections - 35 USC § 112

5. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

6. Claims 19, 22-27 and 34-39 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

7. Claim 22 is indefinite because the scope of the phrase "pectins of the E 440 type" is unknown. Further, the scope of the phrase "derivatives thereof" is unknown.

8. The claims' preambles use the unconventional term "characterized by" rather than "comprises," "consists of," or "consisting essentially of."

9. Claim 19 is indefinite because the scope of the phrases "slightly soluble," "reversible cold haze" and "permanent haze" is unknown.

10. Claim 23 is indefinite because the scope of the term "hot" is unknown.

11. Claim 34 is indefinite because it appears to claim a range within a range.

12. The claims are indefinite because they do not recite positive process step limitations, e.g., --adding-- rather than "there is used."

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13. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless --

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

14. Claims 19 and 34-39 are rejected under 35 U.S.C. 102(b) as being anticipated by Bukovskii et al. (S.U. Pat. No. 685689).

15. Bukovskii et al teach the use of pectin, obtained from beets, as an additive to beer to produce a "better quality beer with [a] stable high head" (see Abstract). It is added in an amount of 0.5 to 10 mg/l. Claim 36 is considered to be anticipated because "about 50 mg/l" is considered to encompass 10 mg/l. As to the production of particles, as claimed in Claim 37, because the claimed process steps are the same as found in the prior art, the particles are inherently present.

16. The Office does not have the facilities for examining and comparing Applicant's product with the product of the prior art in order to establish that the product of the prior art does not possess the same material structural and functional characteristics of the claimed product. In the absence of evidence to the contrary, the burden is upon the applicant to prove that the claimed are functionally different than those taught by the prior art and to establish patentable differences. See *In re Best*, 562 F.2d 1252, 195 U.S.P.Q. 430 (CCPA 1977); *Ex*

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Conclusion

17. No claim is allowed.

18. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Curtis Sherrer whose telephone number is (703) 308-3847.

The examiner can normally be reached on Tuesday through Friday from 6:30 to 4:30.

19. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Gabrielle Brouillette, can be reached on (703)-308-0756. The **fax phone number** for this Group is (703)-305-3602.

20. Any inquiry of a general nature or relating to the status of this application should be directed to the Group receptionist whose telephone number is (703) 308-0661.



Curtis E. Sherrer
Primary Examiner
November 17, 2000